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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

JUL 18 1997

In the Matter of)
)
Amendment of the Commission's Rules to)
Relocate the Digital Electronic Message)
Service from the 18 GHz band to the 24 GHz)
band for Fixed Service)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Docket # ET 97-99

To: Chief, Public Safety and Private Wireless Division

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PETITION FOR RECONSIDERATION

BellSouth Corporation ("BellSouth"), by its attorneys, hereby petitions the Commission for reconsideration of its *Modification Order*,¹ which modifies the licenses of those licensees authorized to operate a digital electronic message service ("DEMS") in the 18.82-18.92 GHz and 19.16-19.26 GHz bands ("18 GHz band") to allow operation in the 24.25-24.45 GHz and 25.05-25.25 GHz bands ("24 GHz band"), and prohibits the use of the 18 GHz band after midnight, January 1, 2001.

The *Modification Order* was adopted pursuant to a Commission directive in its *24 GHz Order*² that "[a]ll DEMS licenses for the 18 GHz band [would] be modified by a separate action by the Wireless Telecommunications Bureau."³ Currently, the *24 GHz Order* is the subject of four

¹ *Amendment of the Commission's Rules to Relocate the Digital Electronic Message Service From the 18 GHz Band to the 24 GHz Band and to Allocate the 24 GHz Band For Fixed Service*, DA 97-1285, *Order*, (June 24, 1997) ("*Modification Order*").

² *Amendment of the Commission's Rules to Relocate the Digital Electronic Message Service From the 18 GHz Band to the 24 GHz Band and to Allocate the 24 GHz Band For Fixed Service*, ET Docket No. 97-99, *Order*, 12 F.C.C.R. 3471 (1997) ("*24 GHz Order*").

³ *See id.* at 3476.

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petitions for reconsideration and one petition for clarification, which request the Commission to vacate the *24 GHz Order* based on the Commission's failure to abide by the Administrative Procedure Act's ("APA") notice and comment requirement, and possible violation of the auction statute, among other things.⁴ Specifically, the petitions make the following points:

- The Commission improperly relocated DEMS licensees from the 18 GHz band to the 24 GHz band without engaging in the APA's required notice and comment procedures, because neither the "military function" nor the "good cause" exceptions apply to the *24 GHz Order*.
- The Commission's grant of a four-fold increase in spectrum, resulting in a windfall to incumbent DEMS licensees, was based on an incorrect analysis of both the technical differences between the 18 GHz band and the 24 GHz band and the compensation rights of incumbent licensees.
- The *24 GHz Order* violates competitive bidding procedures, as set forth in § 309(j) of the Communications Act.
- The *24 GHz Order* does not resolve underlying questions concerning the validity of Teledesic's 18 GHz DEMS licenses.⁵

BellSouth specifically incorporates by reference its petition for reconsideration of the *24 GHz Order* (and all associated filings). In view of the substantial challenges to the *24 GHz Order* authorizing the *Modification Order*, BellSouth respectfully requests that the Commission vacate the *Modification Order* or freeze its effectiveness until the Commission can rule on the petitions for reconsideration and clarification of the *24 GHz Order*. Such action will not only preserve the *status quo*, but will actually protect the DEMS licensees from the risk of building facilities while their authorizations are under serious legal challenge. Otherwise, if the authorizing *24 GHz Order* is


⁴ BellSouth Petition for Reconsideration (filed June 5, 1997); Petition for Reconsideration of DIRECTV Enterprises, Inc. (filed June 5, 1997); Petition for Partial Reconsideration of the Millimeter Wave Carrier Association, Inc. (filed June 5, 1997); WebCel Communications, Inc. Petition for Reconsideration (filed June 5, 1997) and Petition for Clarification of WinStar Communications, Inc. (filed June 5, 1997).

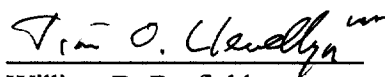
⁵ Teledesic Corporation was formerly Associated Communications, L.L.P.

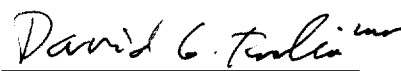
reversed upon subsequent Commission or court review, their investment may be stranded. In addition, expedited action on the petitions for reconsideration and clarification is requested.

Respectfully submitted,

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July 18, 1997

CERTIFICATE OF SERVICE

I, Linda K. Chalfant, do hereby certify that copies of the foregoing "Protective Petition for Reconsideration" were served by U.S. first-class mail, postage prepaid, on July 18, 1997, upon the following:

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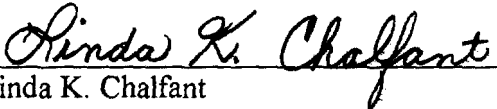
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